

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

OPINION AND ORDER

This matter comes before the Court on Defendant Affiliated Pathologists, P.A.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry #24). Plaintiff initiated this action on May 20, 2016, seeking recovery for breach of an employment contract and for violation of the Oklahoma Protection of Labor Act.¹ Jurisdiction is based upon diversity of citizenship of the parties. Through the pending Motion, Defendant Affiliated Pathologists, P.A. ("Affiliated") contends that the employment contract with Plaintiff expressly requires that it will be governed by the laws of the State of Texas. As a result, Affiliated asserts that the jurisdictional amount cannot be met because the amount in controversy under the contract is \$58,400.00 and the only way for Plaintiff to meet the required amount is to seek recovery of the

¹ Defendant Affiliated Pathologists, P.A. is the sole remaining Defendant named in this action.

liquidated damages under the Oklahoma Protection of Labor Act ("OPLA"). Affiliated contends the OPLA cannot be applied to the employment contract between the parties which is governed by Texas law.

To establish a wage claim under the OPLA, 40 Okla. Stat. §§ 165.1 et seq., an employee has the burden of establishing the following elements: (1) an employer-employee relationship, (2) wages are earned and due or provided in an established policy, (3) employment was terminated, and (4) the employer failed to pay the employee's wages at the next regular pay day after termination.

Coen v. SemGroup Energy Partners G.P., LLC, 310 P.3d 657, 662 (Okla.Civ.App. 2013). Under the OPLA's definition, "an employee's 'wages' are the amount the employer has offered or promised to pay as compensation for the employee's labor or services rendered and are earned and due." Id. at 662-63. While the OPLA refers to the employment contract in order to establish wages, it is extra-contractual relief which is sought by the violation of its terms. Consequently, the choice of law clause within the employment contract between Plaintiff and Affiliated has no bearing upon whether Plaintiff can pursue a claim under Oklahoma law based in the OPLA. As a result, Plaintiff has alleged sufficient damages to establish the jurisdictional amount under diversity jurisdiction.

IT IS THEREFORE ORDERED that Defendant Affiliated Pathologists, P.A.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry #24) is hereby **DENIED**.

IT IS SO ORDERED this 29th day of September, 2017.



KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE